IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 471 of 2006

MOHD.UMAR
V/S
DEVENDRA KUMAR & ANR.

Mr. SUDHIR SARUPARIA, for the appellant / petitioner

Mr. DLR VYAS for Mr. B.M.BOHRA,CAVEATOR, for the respondent

Date of Order : 15.12.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties, and perused the impugned judgments and decrees.

Both the learned courts below have decreed the suit for eviction on the ground of reasonable and bonafide necessity by deciding the question of comparative hardship, and partial eviction against the appellant.

Having gone through the findings I am satisfied that the findings are not required to be interfered on any of the grounds available under Section 100 C.P.C.

Learned counsel for the appellant then submitted that the learned trial court has passed the decree for

arrears of rent along with interest of 6 per cent pendte lite, and 9 per cent interest from the date of decree till eviction, while the amount had been deposited under Section 19A, and monthly rent was also deposited regularly.

In that view of the matter, this award of interest is wholly uncalled for. Learned counsel for the respondent is also not able to satisfy as to how this part of the decree could be passed by the learned trial court, and upheld by the learned lower Appellate court.

Consequently, the appeal is partly allowed in the manner that the directions given by the learned trial court about interest contained in para-3 of the operative order, and affirmed by the learned lower Appellate Court is set aside. However, the decree for eviction is maintained.

However, at the request of the learned counsel for the appellant, the appellant is given one and a half year's time to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears

of rent, if any, shall be deposited by the appellant in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

/Sushil/